

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICHARD HOEFT,

Plaintiff,

v.

ROBERT HARROP,

Defendants.

ORDER

08-cv-674-bbc

Plaintiff Richard Hoeft is proceeding in forma pauperis on his claim that defendant Robert Harrop violated his Eighth Amendment rights by being deliberately indifferent to his serious medical need. On July 31, 2009, I denied plaintiff's motion for summary judgment. Dkt. #22. Now plaintiff has filed a motion to alter or amend that decision. Dkt. #23.

In support of his motion, plaintiff states that the defendant did not serve him with a copy of his response to plaintiff's motion for summary judgment. He submits no affidavit in support of his contention that he was not served. On the other hand, defendant's counsel submitted a certificate of service that she had mailed the opposition to plaintiff's summary judgment to plaintiff at the address he had provided. Dkt. #21. Plaintiff's mere statement that defendant never sent him a response to his motion for summary judgment does not

persuade me to alter or amend my order denying his motion.

Further, plaintiff had been notified by the court on May 19, 2009 that defendant's opposition to his motion for summary judgment was to have been filed by June 18, 2009. Plaintiff provides no information regarding why he did not contact defendant or the court when he had not received defendant's opposition materials by that date. Had plaintiff even checked on the status of his case between June 12 and June 29, when his reply was due, he would have seen the docket entries for defendant's response. However, he waited until the court issued its decision to inform anyone that he had not received defendant's opposition materials.

If, in fact, plaintiff did not receive these materials as he alleges, he has not been prejudiced. Plaintiff contends that his motion for summary judgment was denied because his failure to reply to defendant's proposed findings of fact resulting in defendant's facts being undisputed. However, defendant's facts were not the only reason plaintiff's motion was denied. In my July 31, 2009 order, I noted that plaintiff had failed to provide any evidence that he had actually lifted objects weighing over 20 pounds or that his unloading of the food truck resulted in any injury. Dkt. #22 at 6-7. Thus, regardless of the proposed facts submitted by defendant, plaintiff's motion would have been denied. Moreover, in the July 31 order, I provided the parties an opportunity to file new dispositive motions no later than August 14, 2009. Plaintiff may either refile a motion for summary judgment with

additional evidence or respond to any motion filed by the defendant.

Because I find that plaintiff's motion for summary judgment was properly denied, his motion to alter or amend my decision will be denied.

ORDER

IT IS ORDERED that plaintiff's motion to alter or amend the July 31, 2009 decision on his motion for summary judgment, dkt. #23, is DENIED.

Entered this 11th day of August, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge